IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 15TH NOVEMBER 2006 / 24TH KARTHIKA 1928

CRL.A.No. 855 of 2005()

SC.438/2001 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE

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APPELLANT:

P.J. AUGUSTI, S/O. JOSEPH,
PEZHATHINKAL HOUSE, ATHIYODI P.O.,
KOORACHUND, KOZHIKODE, PIN-673 527.

BY ADV. SRI.S.SREEKUMAR
SRI.P.JAYABAL MENON
SRI.P.K.SOYUZ
SRI.MANU ROY

RESPONDENT: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Crl.M.A.No. 7496/2005 in Crl.A. No. 855/2005

Dismissed.

15-11-2006

Sd/-K.Thankappan,
Judge.

K. Thankappan, J.

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Crl.A. No. 855 of 2005

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Dated this the 15th day of November, 2006

JUDGMENT

Accused in S.C.No.4382001 on the file of the Court of the Addl. District and Sessions Judge Fast Track (Adhoc-I), Kozhikode is the appellant. He faced trial for the offences punishable under sections 406, 420, 511 and 376 IPC on the allegation that on 24-3-1999 at about 11 a.m. he approached CW1 at her residential house under the pretext of discussing the matter of property, caught hold and dragged her to the bedroom and attempted to commit rape on her. CW1 had filed Ext.P3 First Information Statement before PW13 and on the basis of the above complaint Crime No.60/99 has been registered against the appellant under section 406, 420, 511 and 376 IPC. After registration of the crime, PW16 conducted the investigation and filed final charge against the appellant. To prove the allegation against the appellant, on the side of the prosecution PW1 to PW16 were examined and Exts.P1 to P14 were marked. On the side of defence, Exts. D1 and D2 were marked. On appreciation of the evidence adduced by the prosecution, the trial court found that the appellant guilty for an offence punishable under section 354 IPC and convicted thereunder.

The appellant is sentenced to undergo rigorous imprisonment for a period of one year. The period of detention, which the appellant had undergone in connection with this case, was set off against the substantive sentence under section 428 Cr.P.C. The conviction and sentence awarded against the appellant are challenged in this appeal.

2. The learned counsel for the appellant submits that the trial court went wrong in accepting the evidence of the prosecution witnesses to find the appellant guilty under section 354 IPC. The learned counsel also submits that the trial court ought to have seen that the prosecution has miserably failed to place the true case. The learned counsel further submits that the motive alleged by the prosecution for the the commission of offence is not proved. Lastly, the learned counsel submits that even if the evidence of so-called eye witnesses, PW1, PW2 and PW4, and other occurrence witnesses, PW6, PW7, PW8 and PW9 are believed, the prosecution version with regard to the entire allegation is a distorted one and hence the appellant cannot be guilty of any offence.

3. Learned Public Prosecutor, on the other hand, submits that the trial court relied on the evidence of PW1 to PW3 and PW6 to PW8 with regard to the presence of the appellant in the place of occurrence and hence the finding entered by the trial court is justifiable and the conviction entered

against the appellant is sustainable. It is also submitted that the evidence would show that the appellant went to the house of PW1, closed the front door and caught hold of hand and attempted to commit rape and at that time the appellant was seen as naked and the evidence has not been shattered by cross-examination by the defence counsel.

4. The question to be decided in this appeal is whether the appreciation of the evidence by the trial court is correct or not?

5. The prosecution case is based on Ext.P1 agreement alleged to have been entered between PW1 and the appellant. It is alleged by the prosecution that the appellant had not re-register the property in the name of PW1 even after the payment of the amount borrowed from the appellant. Then PW1 made Ext.P2 complaint dated 27-7-1999. In the complaint she had not stated with regard to the attempt of committing rape to her. If any incident is happened on 24-3-1999, as alleged by the prosecution, the alleged attempt should have been mentioned in Ext.P2. At the same time, Ext.P3 First Information Statement is given only on 8-8-1999. Hence, this Court is of the view that the the prosecution case is doubtful.

6. The evidence of PW1 and PW2 would show that property has been purchased form PW10 by PW1 and an amount of Rs.1,11,000/- has

been paid. As PW1 and PW2 could not arrange the balance amount in time, they borrowed the amount from the appellant on executing the document in his name. Even after the payment of the amount, the appellant had not re-registered the document in favour of PW1. When PW10 was examined, he deposed that he sold the property directly to the appellant and given all the back records to the appellant. Hence, the prosecution case cannot be believed and it may be a case of trap made by PW1, PW2 and PW7. At the time of presence of PW2, there might have some altercation between PW2 and the appellant. In the aforesaid circumstances, this Court is of the view that the alleged motive is not proved by the prosecution. Only because of the presence of the appellant, as spoken to by the witnesses, this Court is not in a position to hold that the appellant committed the offence.

7. The case of the appellant is that he was on question paper duty on 24-3-1999 at Kulathuvayal School. There is no evidence to show that he absented from the duty. A suggestion was put to PW15 and PW16 that whether any complaint is received regarding the non-presence of the appellant in the school? Their answer was in negative. Further the delay in giving Ext.P3 First Information Statement is also relevant in this case.

8. In the aforesaid circumstances, this Court is of the view that the the conviction and sentence ordered against the appellant are liable to be

set aside. Ordered accordingly. Consequently, the appellant is found not guilty of the offence and he is acquitted. The bail bond shall stand cancelled.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No. 8552005

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Judgment

15-11-2006